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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 130

INDIANAPOLIS BREWING COMPANY, INC.,
Appellant,

vs.

THE LIQUOR CONTROL COMMISSION OF THE STATE OF MICHIGAN ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

MOTION TO AFFIRM.

RAYMOND W. STARR,
Attorney General of the State of Michigan;
EDMUND E. SHEPHERD,
Assistant Attorney General,
Counsel for Appellees.

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IN THE

DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION, IN EQUITY

No. 8269

INDIANAPOLIS BREWING COMPANY, INC., AN INDIANA CORPORATION,

vs. *Plaintiff and Appellant,*

THE LIQUOR CONTROL COMMISSION OF THE STATE OF MICHIGAN, EDWARD W. McFARLAND, HALE G. KNIGHT, AND VEROLD F. GORMELY, INDIVIDUALLY AND AS MEMBERS OF THE LIQUOR CONTROL COMMISSION OF THE STATE OF MICHIGAN; FRANK MURPHY AND LEON D. CASE, INDIVIDUALLY AND AS MEMBERS EX-OFFICIO OF THE LIQUOR CONTROL COMMISSION OF THE STATE OF MICHIGAN; RAYMOND W. STARR, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE STATE OF MICHIGAN,

Defendants and Appellees.

APPELLEES' MOTION TO AFFIRM THE ORDERS OF THE DISTRICT COURT.

(RULE 7, PARAGRAPHS 3 AND 4; RULE 12, PARAGRAPH 3.)

The appellees, by Raymond W. Starr, Attorney General of the State of Michigan, respectfully move the Supreme

Court of the United States to affirm the several orders of the District Court of the United States for the Eastern District of Michigan, Southern Division, from which appeal is sought, for the following reasons:

1. Because it manifestly appears that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

2. Because consideration of the questions involved in this appeal is foreclosed by former decisions of this Court in the cases presently cited.

Supporting Brief.

In support of the foregoing motion to affirm, appellees make the following suggestions:

First. The sole question for decision may be stated as follows:

Without violating the commerce clause of Article 1, Section 8, of the Federal Constitution, or the 'equal protection clause' of the Fourteenth Amendment, may the State of Michigan, in the valid exercise of its sovereign police powers with respect to the manufacture and sale of intoxicating liquors (Article XVI, Section 11, Michigan State Constitution), prohibit its licensees from 'purchasing, receiving, possession or selling any beer manufactured in any state,' the laws of which

(a) require a licensed wholesaler of beer therein to pay an additional fee for the right to purchase, import, or sell beer manufactured in this state;

(b) or which deny the issuance of a license authorizing the importation of beer to any duly licensed whole-

saler of beer therein who may make application for such license;

(c) or which prohibit licensed wholesalers of beer therein from possessing or selling beer purchased in this State, unless the one from whom purchased has secured a license and paid a fee therein, when such seller neither transports the beer into said State nor sells the same therein;

(d) or which impose any higher taxes or inspection fees upon beer manufactured in this State when transporting into or sold therein, than is imposed upon beer manufactured and sold within said State?

A statute of the State of Michigan so provides, and appellant claims it is unconstitutional; but the District Court sustained its validity. Act No. 8, Public Acts of the State of Michigan, Extra Session 1933, Section 40, as amended by Act No. 281, Public Acts, State of Michigan, 1937.

Second. The District Court held, and we think correctly so, that 'a Michigan statute designating ten states as discriminatory with respect to importation of out-of-state beer and prohibiting the purchase, receipt, possession, or sale of any beer manufactured in those states is not unconstitutional as an unreasonable classification in violation of the equal protection clause of the Federal Constitution, where the statute operates equally on all ten states, since Michigan could regulate its own industry and control its own market to the extent that its industries were elsewhere excluded, and that such exclusion threatened their economic stability.' Twenty-first Amendment, Federal Constitution. *Indianapolis Brewing Co.* v. *Liquor Control Commission* (1938), 21 Fed. Supp. 969.

Third. This question, we respectfully submit, is controlled in principle by *State Board of Equalization of California* v.

Young's Market Co. et al., 299 U. S. 59, 57 S. Ct. 77, 81 L. Ed. 38.

And, as observed by Circuit Judge Simons in the court's opinion, the issue is narrowed to a consideration of appellant's claim that 'a classification which differentiates the product of certain states from that of other states is wholly arbitrary and capricious, and void under the equal protection clause.'

> "There exists no reasonable basis, it says, for this difference of treatment, and the regulation has no relation to the exercise of the police power of the state in protecting the health, safety, morals, and welfare of its people. Nor does it aid in policing the state's regulatory laws governing the manufacture and sale of beer. Its purpose, it contends, is purely retaliatory and economic, for Michigan has no concern with the laws of other states and no power to impose its will by economic restrictions or prohibitions upon the law-making power of other states. Nor has it the power to enact statutes or adopt regulations the enforcement of which may be subject to the exercise of legislative power in another state."

The District Court, in a well reasoned opinion (21 Fed. Supp. 969), rejects these several contentions, holding in effect that the scope of State police power is not limited by narrow connotations to be assigned to the phrase 'the protection of the health, safety and morals of the people,' but that it has been extended to the promotion of fair competitive conditions and equalization of economic advantages, even though the evils requiring regulation arise solely from operations in part the result of extrastate transactions.

Such, we apprehend, is the principle announced by this Court in the *Young's Market* case, *ante*, and the views expressed by the lower court are well sustained by the authorities cited in the opinion.

Fourth. Without indulging in extended quotations, we respectfully submit that appellees' motion to affirm at this time should be granted upon the following authority:

Barbier v. *Connolly*, 113 U. S. 27, 5 S. Ct. 357, 28 L. Ed. 923;

Lake Shore & M. S. Railroad Co. v. *Ohio*, 173 U. S. 285, 19 S. Ct. 465, 43 L. Ed. 702;

Chicago B. & O. Railroad Co. v. *Illinois Drain Commissioners*, 200 U. S. 561, 592, 26 S. Ct. 341, 50 L. Ed. 596;

Cox v. *Texas*, 202 U. S. 446, 26 S. Ct. 671, 50 L. Ed. 1099;

Mutual Loan Co. v. *Martell*, 222 U. S. 225, 32 S. Ct. 74, 56 L. Ed. 175.

(And see, especially:)

State Board v. *Young's Market Co.*, 299 U. S. 59, 57 S. Ct. 77, 81 L. Ed. 38; and

Great Atlantic & Pacific Tea Co. v. *Grosjean*, 301 U. S. 412, 57 S. Ct. 772, 778, 81 L. Ed. 1193, 112 A. L. R. 293.

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